IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 12398 of 2000

Between:

Zillapally Gopamma W/o.late Lakshmaiah
R/o.H.No.6-3-535 Near Savarkar Statute
Ramagiri, Nalgonda District

..... PETITIONER

AND

Principal District and Sessions Judge, Nalgonda

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction or writ calling for the records relating to proceedings Dis.No.14096/99/A1, Dt.18/11/1999 on the file of the respondent and quash the same as arbitrary, illegal and contrary to GO.Ms.No.156 Fin. & Plg (FW.Pen.I) Dt.29/04/1983 and consequently direct the respondents to recommend the concerned officers to grant pensionary benefits by taking into account pre-absorption service of full time contingent employee in combination with regular government service i.e., 08/04/1971 to 30/11/1997 and pass such other order.

Counsel for the Petitioner: MR.M.VENKAT RAM REDDY

Counsel for the Respondent: SMT.M.BHASKARA LAKSHMI (SC FOR APHC)

The Court made the following:

ORDER:

The petitioner joined the Administrative Office of the Principal District

Judge at Nalgonda as contingent worker on 01.01.1965. Later on, her status was changed to that of a full time masalchi with effect from 08.04.1971. With reference to G.O.Ms.Nos.9, 38 and 233 dated 08.01.1981, 01.02.1980 and 19.08.1983 respectively, the petitioner was already drawing minimum pay scale of Attender since 12.08.1989. On 01.08.1989, an order was passed appointing her as Attender from the date of joining the post, which was kept vacant. There was another reason also for appointing her as Attender; her husband-Zillapally Lakshmaiah, Attender, had sought voluntary retirement due to ill-health and had requested that his wife be taken in his place. Since the petitioner had completed the requisite period of service as full time Masalchi, the said order was passed on 01.08.1989, and therefore with effect from 12.08.1989 she was working as full time Attender. Ultimately, she sought voluntary retirement on the ground of ill-health and she was permitted to retire voluntarily on 30.11.1997. Her claim for treating the period of service rendered as full time contingent employee from 08.04.1971 onwards as Class-IV service for the purpose of pension was turned down by order dated 18.11.1999 and the petitioner for questioning the said order, filed this writ petition.

Reliance is placed on various G.Os., including G.O.Ms.No.156 dated 29.04.1983 to the effect that the Government has decided that the pre-absorption service of full time contingent employees who were absorbed in government service against the posts of full time contingent employees converted into Last Grade Posts, in accordance with G.O.Ms.Nos.38 and 9 dated 01.02.1980 and 08.01.1981 respectively, be counted for the purpose of pension in combination with subsequent Government service in relaxation of Article 361 of C.S.Rs. Claim for counting such period as full time contingent employee was negatived by the respondent by making reference to Circular memo No.13924-D/678/Pen;I/90, dated 20.11.1990 which reads as under: -

> “Instances have come to notice of Govt. that some of such contingent employees absorbed into Govt. service as last grade

employees are subsequently seeking voluntary retirement under Rule-43 of A.P. Revised Pension Rules, 1980. Since the above order itself is a concession, this concession cannot be extended for voluntary retirement under Rule-43 of A.P.R.P.Rules, 1980. If a contingent employee wants to retire voluntarily after completion of 20 years of service, he should have to his credit 20 years of qualifying service under the Govt. exclusively. He cannot be allowed to count the earlier non-qualifying service of full time contingent employee for purpose of voluntary retirement on the ground that it counts for pension."

Reliance placed on the aforementioned circular is misplaced inasmuch as the petitioner is not seeking for voluntary retirement on the basis of the various G.Os or the circular but she wants only the period of full time services rendered by her as full time Masalchi with effect from 08.04.1971 till the date of absorption against the post of Attender to be counted for the purpose of pension which is permissible in terms of the G.O.Ms.No.156 dated 29.04.1983. Therefore, the order of the respondent in declining the said benefit being bad in law is liable to be set aside.

The writ petition accordingly is allowed. Direction is issued to the respondent to count the service rendered by the petitioner as full time Masalchi from 08.04.1971 onwards also for the purpose of pension. The respondent will issue appropriate direction after obtaining necessary information from the petitioner and forward her papers for grant of pension, in accordance with law. Needful will be done within a period of three months from the date of receipt of the writ order from the Court.

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(DEVINDER GUPTA, CJ)

16.02.2005

(B.SESHASAYANA REDDY, J)

DR

That Rule nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Wednesday, the sixteenth day of February, Two thousand and five.

To

1. Principal District and Sessions Judge, Nalgonda

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